

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION**

KATHRYN BLAIR, Individually and)	
Administrator of Michael K. Wright,)	
Deceased, et al.,)	
Plaintiffs,)	
)	
v.)	3:08-CV-0127-M
)	
ALFONSO CARDENAS, et al.,)	
Defendants.)	

**FINDINGS, CONCLUSIONS AND RECOMMENDATION
OF THE UNITED STATES MAGISTRATE JUDGE**

Pursuant to the provisions of 28 U.S.C. § 636(b), and an order of the District Court in implementation thereof, this case has been referred to the United States Magistrate Judge. The findings, conclusions and recommendation of the Magistrate Judge are as follows:

FINDINGS AND CONCLUSIONS:

On June 23, 2008, the court filed an order which in pertinent part directed Plaintiffs “to show cause why the complaint, to the extent it names Alfonso Cardenas ... as [a] Defendant, should not be dismissed pursuant to Rule 4(m), Federal Rules of Civil Procedure.” As of the filing of this recommendation, Plaintiffs have failed to respond to the court’s order.

Rule 4(m) reads in relevant part as follows:

If a defendant is not served within 120 days after the complaint is filed, the court – on motion or on its own after notice to the plaintiff – must dismiss the action without prejudice against that defendant or order that service be made within a specified time. But if the plaintiff shows good cause for the failure, the court must extend the time for service for an appropriate period.

Fed. R. Civ. P. 4(m).¹


¹ The language of Rule 4(m) was amended effective December 1, 2007, as part of the general restyling of the Civil Rules.

In light of the failure to respond to the order to show cause, the court finds that Plaintiffs cannot satisfy the “good cause” standard of Rule 4(m). Accordingly, Defendant Alfonso Cardenas should be dismissed without prejudice.

RECOMMENDATION:

For the foregoing reasons, it is recommended that Defendant Alfonso Cardenas, MD, be DISMISSED without prejudice pursuant to Rule 4(m).

SIGNED this 1st day of August, 2008.


WM. F. SANDERSON, JR.
UNITED STATES MAGISTRATE JUDGE

NOTICE

In the event that you wish to object to this recommendation, you are hereby notified that you must file your written objections within ten days after being served with a copy of this recommendation. Pursuant to *Douglass v. United Servs. Auto Ass'n*, 79 F.3d 1415 (5th Cir. 1996) (*en banc*), a party's failure to file written objections to these proposed findings of fact and conclusions of law within such ten-day period may bar a *de novo* determination by the district judge of any finding of fact or conclusion of law and shall bar such party, except upon grounds of plain error, from attacking on appeal the unobjected to proposed findings of fact and conclusions of law accepted by the district court.